

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned On Briefs June 12, 2008

**KENNETH LEWIS v. GEORGE LITTLE, ET AL.**

**Direct Appeal from the Chancery Court for Davidson County**  
**No. 06-1878-I Claudia C. Bonnyman, Chancellor**

---

**No. M2007-01361-COA-R3-CV - Filed July 25, 2008**

---

The lawsuit giving rise to this appeal was brought by an inmate in the custody of the Tennessee Department of Correction (“TDOC”) who is a dialysis patient confined to a medical unit. Petitioner/Appellant asserts that, despite his medical condition, the TDOC has violated his constitutional rights by refusing to provide him with a regular prison diet rather than with medically restrictive meals. The trial court dismissed Petitioner’s petition for common law writ of certiorari as time barred under Tennessee Code Annotated § 41-21-806(b). To the extent to which the trial court perceived the petition to be a declaratory judgment action pursuant to the Administrative Procedures Act (“APA”), the trial court dismissed the action upon concluding that TDOC policies governing inmate meals are not “rules” under the APA. Petitioner appeals. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; and Remanded**

DAVID R. FARMER, J., delivered the opinion of the court, in which ALAN E. HIGHERS, P.J., W.S., and HOLLY M. KIRBY, J., joined.

Kenneth Lewis, *Pro se*.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Kellena Baker, Assistant Attorney General, for the appellees.

**OPINION**

***Background***

Petitioner Kenneth Lewis (Mr. Lewis) is an inmate in the custody of the TDOC serving a 25 year sentence following a guilty plea to the charge of second degree murder. On November 11, 2005, Mr. Lewis filed a grievance with the TDOC requesting regular meal trays in place of a diet that had been modified in response to his medical needs. The TDOC denied his grievance on December 15, 2005. In March 2006, Mr. Lewis filed a petition for declaratory order with the TDOC. In his

petition, Mr. Lewis sought a declaration that he had a right to refuse a medically restricted diet. The TDOC denied Mr. Lewis's petition on May 8, 2006. In its denial correspondence, the TDOC asserted that Mr. Lewis's request involved a policy matter and was not subject to a declaratory order under Tennessee Code Annotated § 4-5-102(10)(A) where it was not a "rule" subject to review.

On June 28, 2006, Mr. Lewis filed a "Petition for Common-Law Writ of Certiori" [sic] against George Little, Commissioner, Tennessee Department of Correction, et al, (collectively, the TDOC) in the Chancery Court for Davidson County. In his petition, Mr. Lewis asserted that he had a right to refuse dietary restrictions under the United States Constitution and the Tennessee Constitution. He additionally presented the following questions for review:

Who is responsible for enforcing TDOC policy if said policy is not, in fact, an administrative Rule, and petitioner has exhausted the grievance procedure? What other recourse does the petitioner have?

The TDOC filed a motion to dismiss Mr. Lewis's petition in October 2006. In its motion, the TDOC asserted that, although Mr. Lewis had styled his action as a petition for common law writ of certiorari, the action was correctly characterized as a declaratory judgment action where it requested review of the TDOC's denial of Mr. Lewis's petition for declaratory order. The TDOC argued that Mr. Lewis had not alleged a cause of action for declaratory judgment, however, because the policies of the TDOC governing the provision of meals is not a statute, rule or order subject to review under the APA.

In his answer to the TDOC's motion to dismiss, Mr. Lewis asserted his action was one seeking a common law writ of certiorari and not one for declaratory judgment. He further asserted a Constitutional liberty interest in his right to refuse a medically restricted diet and to choose a regular prison meal.

On May 16, 2007, the trial court dismissed Mr. Lewis's action on two grounds. First the trial court dismissed the matter as time barred pursuant to Tennessee Code Annotated § 41-21-806 upon finding that, insofar as the lawsuit sought review of the TDOC's denial of Mr. Lewis's grievance in December 2005, Mr. Lewis failed to file his action within thirty-one days as required by the statute. Second, insofar as Mr. Lewis's action could be construed as one for declaratory judgment despite Mr. Lewis's assertion to the contrary, the trial court dismissed the action as not appropriate for declaratory judgment where TDOC policies regarding modified diets are not "rules" for the purposes of Tennessee Code Annotated § 4-5-225. Mr. Lewis filed a timely notice of appeal to this Court on June 18, 2007.

### *Analysis*

In his brief to this court, Mr. Lewis asserts the trial court erred by dismissing his action without addressing the merits of his argument that he has a Constitutionally protected right to refuse a medically restricted diet in favor of regular prison meals. Mr. Lewis does not assert that his action,

insofar as it sought review of the TDOC's denial of his grievance, was not time barred under Tennessee Code Annotated § 41-21-806. We affirm dismissal on this ground.

We next turn to the trial court's dismissal of Mr. Lewis's action under the APA. As noted above, in his answer to the TDOC's motion to dismissal, Mr. Lewis asserted that his action was not one for declaratory judgment. On appeal, however, Mr. Lewis asserts that if the trial court is correct that the TDOC policies cannot be challenged under the APA, then an inmate is left with no means of addressing alleged violations of his Constitutional rights. We must disagree.

As noted above, Mr. Lewis had a right to appeal the denial of his grievance, but failed to do so within the statutory limitations period. The Tennessee Supreme Court, moreover, has held that, in general, the TDOC's procedures are not rules for the purposes of the APA. *Mandela v. Campbell*, 978 S.W.2d 531, 534-35 (Tenn. 1998). In *Mandela*, the supreme court held:

[T]he pertinent statutes when read in pari materia evidence a legislative intent to grant considerable deference to those best suited and most familiar with the prison setting when constructing inmate disciplinary policies and procedures. Accordingly, we hold that the legislature did not intend the UAPA to govern the TDOC's disciplinary policies and procedures.

*Id.* at 535. We believe the *Mandela* court's reasoning is equally applicable to TDOC policies governing the provisions of meals.

Further, although Mr. Lewis has characterized this lawsuit to be one involving an inmate's right to refuse medical treatment, we do not perceive it as such. Mr. Lewis does not seek to refuse medical treatment. Specifically, he has not refused confinement to a medical facility or dialysis. Rather, Mr. Lewis's action rests on the proposition that he is entitled to an unrestricted, regular inmate diet while undergoing medical care.

Certainly, under the Eighth Amendment, a state must provide its inmates with "adequate food, clothing, shelter, sanitation, medical care, and personal safety." *Grubbs v. Bradley*, 552 F.Supp. 1052, 1122 (D.C. Tenn. 1982)(quoting *Newman v. Alabama*, 559 F.2d 283, 291 (5th Cir. 1977)). We find no support, however, for Mr. Lewis's assertion that an inmate has a Constitutionally protected right to choose or refuse a specific meal type. See *Ishaaq v. Tennessee Dep't of Corr.*, No. 01A01-9902-CH-00108, 1999 WL 820218 (Tenn. Ct. App. Oct. 15, 1999)(affirming dismissal of inmate's action asserting entitlement to particular meals and food supervisors). Thus, Mr. Lewis's argument must fail.

***Holding***

In light of the foregoing, the judgment of the trial court is affirmed. Costs of this appeal are taxed to the Appellant, Kenneth Lewis.

---

DAVID R. FARMER, JUDGE